

MEMORANDUM OF LAW

DATE: March 23, 1993

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: San Dieguito Union High School District Resolution

The Planning Director has asked our office to review a resolution passed by the Board of Trustees of the San Dieguito Union High School District ("District") purportedly declaring a City ordinance inapplicable to property they are acquiring in North City West Neighborhood 9. For the reasons expressed herein, we believe that the actions of the District are not legally proper.

The District is currently in escrow on a 21-acre junior high school site in Neighborhood 9 of North City West (now Carmel Valley). This is a proper location for the school from a zoning and community plan standpoint. On February 4, 1993, the District's Board passed a resolution pursuant to Government Code section 53094 which purported to render San Diego Municipal Code section 101.0462, the City's Resource Protection Ordinance, inapplicable. (Copy attached.)

Government Code section 53094 provides as follows:

Section 53094. Authority to render
zoning ordinances
inapplicable to use
of school district
property; review by
city or county.

Notwithstanding any other
provisions of this article except
Section 53097, the governing board of
a school district, by vote of
two-thirds of its members, may render a
city or county zoning ordinance
inapplicable to a proposed use of
property by such school district
except when the proposed use of the
property by such school district is

for nonclassroom facilities,
including, but not limited to,
warehouses, administrative buildings,
automotive storage and repair
buildings.

To be valid, the action of the Board must apply to a zoning ordinance and it must not relate to an ordinance that is covered by Section 53097. A zoning ordinance is an ordinance that regulates the use of buildings, structures and land as between industry, business, residents and other purposes. Zoning ordinances also regulate location, height, bulk and size of buildings, set intensity for land uses, etc. (Government Code section 65850.) The City's zoning for the property is proper for the proposed school use and the Board's resolution confirms that fact.

San Diego Municipal Code section 101.0462 is not a zoning ordinance. As its title states, it is a Resource Protection Ordinance.F

The District Board Resolution of February 4, 1993 mentions the Resource Protection Ordinance and cites it correctly in the recitals as San Diego Municipal Code section 101.0462. In the first paragraph of the action part of the resolution it refers to the ordinance as the "Resource Protection Overlay Zone." The Resource Protection Overlay Zone was repealed by Ordinance No. O-17602 (New Series) on February 19, 1991. For purposes of this memo, we assume that the proper ordinance is the Resource Protection Ordinance, San Diego Municipal Code section 101.0462 as amended in 1991.

While it may indirectly regulate land uses, its regulatory purpose does not fit within the scope of those activities covered by a zoning ordinance which a school district may render inapplicable.

Government Code section 53094 references Government Code section 53097. Government Code section 53097 sets forth the type of regulatory ordinances with which a school district must comply. In pertinent part it provides:

Section 53097. School districts;
compliance with
ordinances relating
to onsite facilities
and improvements;
city and county
immunity; district
noncompliance
relating to offsite

improvements

Notwithstanding any other provisions of this article, the governing board of a school district shall comply with any city or county ordinance (1) regulating drainage improvements and conditions, (2) regulating road improvements and conditions, or (3) requiring the review and approval of grading plans as these ordinance provisions relate to the design and construction of onsite improvements which affect drainage, road conditions, or grading, and shall give consideration to the specific requirements and conditions of city or county ordinances relating to the design and construction of offsite improvements.
(Emphasis added)

San Diego's Resource Protection Ordinance regulates many aspects of drainage:

| | |
|----------------|------------------------------|
| Floodways | Section 101.0462(G)(3); |
| Floodplains | Section 101.0462(G)(4); |
| Channelization | Section 101.0462(G)(3)c; and |
| Stream Scour | Section 101.0462(G)(3)(d). |

It also regulates approval of road conditions:

Sections 101.0406(G)(4)(a) and 101.0462(R).

It contains extensive regulations relating to grading:

Sections 101.0462(G)(4)(d)(4),
101.0462(F)(1) through (6),
101.0406(H)(3) and
101.0406(H)(8).

This list is not an exhaustive list of all of the regulations in the Resource Protection Ordinance relating to drainage, roads and grading. These are merely examples of the regulatory scope of the ordinance.

The Resource Protection Ordinance contains a very comprehensive regulatory process for the control of grading and drainage within certain areas of the City, therefore Section 53097 is applicable to it and mandates that the District comply. It is also not a zoning ordinance as defined and therefore it is not a proper subject of an action by the District under Government Code section 53094 to render it inapplicable.

JOHN W. WITT, City Attorney

By

John K. Riess

Deputy City Attorney

JKR:pev:950(x043.2)

Attachment

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